

Item #3:

Resolution Extending Service Agreement With Swanson Water

VILLAGE OF LONG GROVE
RESOLUTION NO. 2013-R-__

**A RESOLUTION EXTENDING THE SERVICE AGREEMENT
WITH SWANSON WATER TREATMENT, INC. FOR THE CONTINUED OPERATION OF
THE ILLINOIS ROUTE 83 SPECIAL SERVICE AREA WATER SUPPLY SYSTEM**

WHEREAS, pursuant to Ordinance No. 2008-O-15, the Village of Long Grove has established a special service area for potable water service (the "**Water SSA**") to certain properties located along Illinois Route 83 between Aptakisic Road and Old McHenry Road (the "**SSA Service Area**"); and

WHEREAS, the Water SSA authorized the Village to develop a deep well water supply system (the "**Water System**"); and

WHEREAS, the operation and maintenance of the Water System requires specialized training and experience; and

WHEREAS, the Village, through its Village Engineer, solicited proposals from persons with appropriate training and experience to operate and maintain the Water System; and

WHEREAS, the Village Engineer reported that few persons with appropriate training and experience to operate and maintain the Water System have responded to the solicitations for proposals; and

WHEREAS, based on the review and assessment of the credentials of interested persons having the appropriate training and experience to operate and maintain the Water System who have responded to the Village's solicitations, the Village Engineer recommended that the Village engage Swanson Water Treatment, Inc. to provide operation and maintenance services for the Water System; and

WHEREAS, on November 23, 2010 the President and Board of Trustees approved Resolution No. 2010-R-46 "A Resolution Waiving Bids and Approving The Selection Of Swanson Water Treatment, Inc. For The Operation Of The Illinois Route 83 Special Service Area Water Supply System"; and

WHEREAS, Swanson Water Treatment, Inc. has submitted the proposed monthly rates for the continued operation and maintenance services for the Water System, a copy of which is attached hereto as **Exhibit A** (the "***Swanson Water Treatment, Inc. Proposal***"); and

WHEREAS, the President and Board of Trustees, being fully advised in the premises, have determined that it is in the best interests of the Village and its residents to extend the service agreement with the Swanson Water Treatment, Inc. for the continued operation of the Illinois Route 83 Special Service Area Water Supply System in accordance with the terms herein;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, LAKE COUNTY, ILLINOIS, AS FOLLOWS:

Section 1: Recitals. The foregoing recitals are hereby incorporated herein as findings of the Village Board of Trustees.

Section 2: Approval of Services.

The President and Board of Trustees hereby: (i) approve the selection of Swanson Water Treatment, Inc. for the continued operation and maintenance of the Water System based on the general terms of the Swanson Water Treatment, Inc. Service Proposal; and (ii) authorize the Village Manager to execute such contract or other appropriate documentation with Swanson Water Treatment, Inc. following receipt of such signed documentation from Swanson Water Treatment, Inc.

Section 3: **Effective Date.** This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this 23rd day of November, 2010.

AYES: (5) Acuna, Barry, Marshall, Schmitt, Weber

NAYS: (0) None

ABSENT: (1) Wachs

APPROVED this 23rd day of November, 2010.

Village President, Maria Rodriguez

ATTEST:

Village Clerk, Karen Schultheis

EXHIBIT A

DRAFT

PROFESSIONAL SERVICES AGREEMENT
FOR THE
MANAGEMENT AND OPERATION OF WATER UTILITY

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made as of this 8th day of January, 2013, by and between the Village of Long Grove, with offices at 3110 RFD, Long Grove, IL 60047 (“Village”), and Swanson Water Treatment, Inc, an Illinois corporation , with offices at 509 E Park Ave, Suite 101, Libertyville, IL (“Company”).

WITNESSETH:

WHEREAS, the Village has taken actions necessary to form its own municipal water utility (“Water System”); and

WHEREAS, the Village is desirous of having an experienced third party operate its Water System; and

WHEREAS, the Village has requested Company to provide certain management and operational services for the Water System; and

WHEREAS, Company is experienced in the business of providing water utility management and operational services, and desires to continue to provide those services set forth in this Agreement, upon the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. BASIC SERVICES

Company shall, perform the professional services for the management and operation of the Water System as described on the attached Schedule 1 - Basic Services in a professional and competent manner.

2. COMPENSATION

For the period beginning December 1, 2012 and ending December 1, 2015, the Company shall received compensation for the performance of services by the Company as follows:

- a. A monthly fixed fee for the Basic Services (“Base Fee”) in the following amounts:

2013 = One Thousand Six Hundred And Fifty Dollars (\$1,650.00)

2014 = One Thousand Six Hundred And Fifty Dollars (\$1,650.00)

2015 = One Thousand Seven Hundred And Fifty Dollars (\$1,750.00)

- b. Reimbursement of costs incurred in the performance of any Additional Services shall be paid to the Company in accordance with Schedule 2.
- c. Any costs incurred by the company for services or expenses not listed in Basic Services or Additional Services. Except for emergency situations, prior approval from the Village shall be required. For costs incurred on an emergency basis, the Company will notify the Village within two (2) days.

The Company shall invoice the Village monthly for the above items. Village shall pay the invoiced amount within thirty (30) days of receipt.

For the contract year beginning on December 1, 2012, and for each contract year thereafter, annual adjustments to the Base Fee shall, Village agrees to pay all such monthly Base Fee or Customer Service Fee during the term of this Agreement.

The Village and Company agree to negotiate an increase in the Base Fee if additional facilities or customers are added to the Water System or other substantial changes or costs are incurred by the Company to operate and maintain the Water System which are beyond the control of the Company. This second Agreement is based on a customer count not exceeding 25.

3. ADDITIONAL SERVICES

Company shall, at the specific written request of the Village, or as required in emergency situations, perform the additional services as described on Schedule 2 – Additional Services. Fees for additional services will be invoiced to the Village on a monthly invoice and will be based on the schedule of charges included.

4. EXCLUDED SERVICES

The Company shall not be responsible for the cost of any capital improvements, capital repairs, equipment repair or replacement or other capital expenditures relating to the Water System except as described in Schedule 1 – Basic Service. Company is also not responsible for operation and maintenance of customer owned service lines and appurtances.

The Company shall not be responsible for providing any of the services or other items described in Section 5 of this Agreement and Schedule 3 - Village Retained Responsibilities unless Village and Company agree in writing to an alternative approach.

5. COOPERATION

During the term of this Agreement, the parties shall cooperate in good faith to share relevant information as reasonably required to ensure efficient and complete operations of the Water System. The parties agree that the Exhibit A of this Agreement adequately describes the Water System. Further, Village and Company desire to create an ongoing partnership that will provide Water System customers with consistently high-quality service.

To aid in the efficient administration of this contract, the Village will empower a representative who will be able to authorize work and make timely decisions related to the Water System. The services to be provided by Company shall be done so in a professional and competent manner.

Village agrees that the Company shall have the right to use the equipment and facilities that are part of the Water System as may be necessary to carry out its professional responsibilities for the management and operation of the Water System.

As part of its overall management and operational services, Company shall provide the services of professional staff appropriately licensed to operate and maintain the Water System. Company shall also appoint an individual as its primary contact for this Agreement, and that person shall be responsible for coordinating the services provided hereunder.

6. TERM

This contract shall have an initial term commencing December 1, 2012 and ending December 1, 2013. Company shall commence performance of this Agreement on a date to be specified by the Village and agreed to by Company.

7. CANCELLATION PROVISION

The Village shall have the right to cancel this Agreement with cause if Company is in substantial breach of the Agreement and does not cure, or does not diligently proceed to cure, such breach within thirty (30) days after receiving written notice of such breach from the Village.

Company shall have the right to cancel this Agreement for cause if the Village is in substantial breach of the Agreement and does not cure, or does not diligently proceed to cure, such breach within thirty (30) days after receiving written notice of such breach from Company.

8. LIABILITY

Each party hereto shall indemnify, defend and hold harmless the other against any loss, cost or liability resulting from the indemnifying party's negligence or intentional wrongs regarding the Water System. The Village's foregoing indemnification shall include, without limitation, design failures in, and inadequate inspection of, projects and installations under the control of the Village's engineers, and work or repairs done by employees or contractors of the Village.

The Village is responsible for all damages, claims, fines and penalties arising from failure by Village, after due notice from Company, to undertake capital repairs and replacements to the Water System in a timely fashion, including capital repairs and replacements related to the Water System, and to provide waterflow into the Facility at levels and characteristics within permit requirements and/or design limits to the extent applicable under Illinois law or applicable federal law. Company shall not be liable to the Village or its customers for any diminution or interruption of service within the Water System not the result of Company's negligence, or for any delay which results from causes beyond Company's reasonable control.

Under no circumstances, shall Company be responsible for special, punitive, incidental or consequential damages. Company will not be responsible for conditions or failures that arise due to the limitations and configuration of the Water System. Company shall not be responsible for any claims, damages or causes of action which may arise in connection with the activities of any other contractor retained directly by the Village.

9. NOTICES

Any and all notices and communications hereunder shall be in writing and delivered personally or mailed by registered or certified mail, return receipt requested.

If to the Village, at:

With a copy to:

If to Company, at:

With a copy to:

XXXXXXXXXXXXX
Attn: XXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

10. MISCELLANEOUS

This Agreement contains the entire Agreement between the parties relating to professional services and supersedes any prior understanding or agreement. Any change, modification or amendment hereto shall be ineffective, unless in writing and executed by the parties hereto. The covenants and conditions contained herein shall bind and inure to the benefit of the successors and assigns of each of the parties hereto. Nothing herein shall give any right or remedy hereunder to any person or entity, except the parties hereto and their successors and assigns.

11. FORCE MAJEURE

Maintenance, replacement or repairs required due to flood, fire, storm, explosion, negligence by anyone other than Company or its agents, unlawful discharges in or out of the facility, acts of God, war or other reasons outside Company control are not within the scope of services provided by Company in this Agreement. In the event of such occurrences, Company may offer the Village assistance in obtaining or providing additional services, repairs, and replacements at an additional fee.

Company shall operate and maintain the facilities according to design parameters. Any process upsets and/or failures due to changes in raw water or influent water characteristics, volume, infiltration and inflow, physical capabilities or constraints of the treatment plant or conveyance system and/or improper design which could not be reasonably foreseen and properly handled in the exercise of the Company's professional responsibility for maintenance of the facility, shall not be the responsibility of Company, and cannot be used as the basis for termination of this Agreement without written mutual consent of both parties.

12. GOVERNING LAW

This Agreement shall be subject to and governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, as of the day and year first written above.

SWANSON WATER COMPANY, INC. ("COMPANY")

VILLAGE OF LONG GROVE ("VILLAGE")

By: _____

By: _____

Attest: _____

Attest: _____

SCHEDULE I - BASIC SERVICES

1. Provide licensed operators and support staff to operate, manage and maintain the Water System as described in Exhibit A, including water mains, fire hydrants, service shut-off valves, water treatment equipment, control and monitoring equipment, well equipment, pumping equipment, and generator.
2. Compile data and file all necessary reports with regulatory agencies, such as the Illinois Environmental Protection Agency ("IEPA")
3. Ensure compliance with all operating standards and notify village of any corrective action beyond basic services it may need to have performed to maintain compliance.
4. Perform sampling and coordinate third party laboratory analyses and review laboratory results and make operational adjustments as necessary.
5. Perform and respond to the Village's customer service needs, including:
 - (a) Reading active water meters;
 - (b) responding to customer complaints;
 - (c) coordinating the connection of new customers to the Water System including installation of meters;
 - (d) meeting with customers and developers to ensure that service needs are met in a timely and efficient manner; and
 - (e) Operating service shut-off valves.
6. Submit a monthly report to the Village detailing:
 - (a) Operational data on the Water System;
 - (b) Maintenance and repair of facilities required;
 - (c) the number and nature of customer complaints, if any, and the manner in which those complaints were handled; and
 - (d) the Company's opinion regarding prospective operating or service needs of the Water System.
7. Maintain 24-hour telephone response line and provide an emergency list of operating personnel.
8. Dispatch qualified personnel on a timely basis per circumstances.
9. Attend meetings, if requested by Village.
11. Promptly report emergencies to designated Village's representative.
12. Provide "locate" services through JULIE
13. Implementation of a Backflow Prevention Inspection Program where Company informs customers of requirements and proper use, and Company will verify that the customer has hired a qualified inspector on the required periodic basis and the customer has performed any corrective actions in a timely manner.
14. Provide basic janitorial services, basic building maintenance, lawn maintenance services, and snow removal services at the water system building facility
15. Off hours emergency response up to 50 manhours annually

SCHEDULE 2 – ADDITIONAL SERVICES

<u>Additional Services available under Agreement for an extra fee</u>	<u>Charge</u>
1. “Pass-thru” purchasing of services and materials related to ordinary operation and maintenance. (See attached list)	Company’s Cost (w/o mark-up)^a
2. Oversight of services and handling of materials related to ordinary operation and maintenance. (See attached list)	No additional Charge^a
3. Technical assistance such as Main Extension permitting, design review, and construction inspection services	\$75.00/ hour plus reimbursables ^b
4. Professional Engineering Services by Company or Third Party	Proposal as needed.
5. Purchasing of services and materials by Company for construction or improvements NOT related to ordinary operation and maintenance.	Invoiced Charges plus 10%
6. Oversight of services and handling of materials for construction or improvements NOT related to ordinary operation and maintenance.	\$60.00/ hour plus reimbursables ^b
7. Equipment rented or provided by Company that may be needed to sustain Service during outages or for construction or improvements NOT related to ordinary operation and maintenance.	Rental Rates plus 10% and Fuel

^a *Company will perform these “pass-thru” procurement services on this “At Cost Basis” only for the initial term of the contract.*

^b *Reimbursables for Technical assistance or Oversight of construction include such items as vehicle costs and postage.*

SCHEDULE 3 - VILLAGE RETAINED RESPONSIBILITIES

1. Oversight and policy making.
2. Establishment of rates and charges.
3. Handling customer calls and transmitting service requests to Company.
4. Capital planning functions including any capital improvements, long-range planning.
5. Regulatory matters with IEPA, ICC, USEPA, etc..
6. Permit fees for Water System
7. Intergovernmental or wholesale water sale agreements.
8. Debt Financing.
9. Eminent Domain/Condemnation Matters.
10. Other utility costs such as electricity or power, natural gas, communication and sewer services

EXHIBIT A

**MAP and DESCRIPTION OF LONG GROVE WATER SYSTEM
(treatment plant, water mains, service area)**